

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMAAL A. MCNEIL,

Plaintiff,

V.

STATE OF NEBRASKA, ROBERT
V. BURKHARD, District Court Judge,
NEBRASKA COURT OF APPEALS,
LAURA PETERSON, State Risk
Manager, EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION, and
NEBRASKA COMMISSION LAW
ENFORCEMENT AND CRIMINAL
JUSTICE,

Defendants.

8:07CV149

MEMORANDUM AND ORDER

This matter is before the court upon Plaintiff’s “Motion for Summons and Service of Other Process” (filing 3) and Plaintiff’s “Motion for Summary Judgment” (filing 4). I will deny both motions.

Plaintiff's motion for summons is premature. As explained in the "Notice Regarding Summons Forms for Pro Se Prisoners Proceeding In Forma Pauperis" that was mailed to Plaintiff along with the Prisoner Payment Order, pro se prisoners proceeding in forma pauperis receive blank summons forms for each named defendant, but those forms are sent to plaintiffs for completion only after the initial partial filing fee has been paid, *and* after the court conducts "initial review" of a complaint. (Filing 8 at CM/ECF page 4.) The deadline for payment of the initial filing fee is June 18, 2007. (Filing 8, Prisoner Payment Order.)

Plaintiff's motion for summary judgment includes an affidavit which states only that "the defendants have no material facts to support the plaintiff claim or they defense [sic] and the plaintiff is entitled to a judgment as a matter of law." (Filing 4.) Summary judgment may be granted only if "there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Plaintiff's conclusory affidavit does not set forth facts admissible in evidence as to which Plaintiff is competent to testify. See Rule 56(e). All facts remain in dispute, and I will deny the motion for summary judgment without prejudice to reassertion after development of the facts.

Accordingly,

IT IS ORDERED:

1. Plaintiff's "Motion for Summons and Service of Other Process" (filing 3) is denied, without prejudice to later, timely, request for summons; and
2. Plaintiff's "Motion for Summary Judgment" (filing 4), is denied without prejudice to a properly supported motion for summary judgment made after development of the facts.

June 1, 2007

BY THE COURT:

s/Richard G. Kopf
United States District Judge